

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DERRICK L. CUNNINGHAM,)	
)	
Plaintiff,)	Civil Action No. 11-393
)	Judge Schwab
v.)	Magistrate Judge Kelly
)	
WESTMORELAND COUNTY PRISON)	
& MAIL HANDLERS, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

Derrick L. Cunningham (“Plaintiff”) currently is an inmate confined to the State Correctional Institution at Greene (“SCI-Greene”), in Waynesburg Pennsylvania. Plaintiff brings this cause of action pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, *et seq.* In his complaint, Plaintiff alleges violations of his rights under the First, Sixth, and Fourteenth Amendments to the Constitution of the United States. ECF No. 3 at 2; ECF No. 3-1 ¶ 2. Plaintiff also asks this Court to bring criminal charges against Defendant Westmoreland County Prison. This case was referred to United States Magistrate Judge Maureen Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates.

On February 3, 2012, the Magistrate Judge issued a Report and Recommendation, ECF No. 29, recommending that the Motion to Dismiss, ECF No. 19, filed by Defendants be granted with prejudice in part, and without prejudice in part. The parties were allowed until February 21, 2012, to file objections. As of the date of this writing no objections have been filed. After *de novo* review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 29th day of February, 2012,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss, ECF No. 19, is GRANTED with prejudice in part, and without prejudice in part. Plaintiff's claims are disposed of in the following manner:

(1) Plaintiff's claims involving mail allegedly sent from a prospective attorney are dismissed without prejudice. Plaintiff shall file an amended complaint with respect to these claims on or before March 21, 2012. Failure to do so will result in these claims being dismissed with prejudice.

(2) All of Plaintiff's remaining claims are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that the Magistrate Judge's Report and Recommendation, ECF No. 29 is adopted as the opinion of this Court.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All registered ECF parties and counsel

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